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9  
10 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
11 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2008-216

13 ROBERT L. MOORE

933 Rosecrans Street

14 San Diego, CA 92106

**DEFAULT DECISION**  
**AND ORDER**

15 Registered Nurse License No. 633963

[Gov. Code, §11520]

16 Respondent.

17 **FINDINGS OF FACT**

18 1. On or about January 18, 2008, Complainant Ruth Ann Terry, in her  
19 official capacity as the Executive Officer of the Board of Registered Nursing, filed Accusation  
20 No. 2008-216 against Robert L. Moore (Respondent) before the Board of Registered Nursing  
21 (Board).

22 2. On or about March 9, 2004, the Board issued Registered Nurse License  
23 No. 633963 to Respondent. The license expired on April 30, 2008, and has not been renewed.

24 3. On or about February 7, 2008, Mona S. Sebastian, an employee of the  
25 Department of Justice, served by Certified and First Class Mail a copy of Accusation  
26 No. 2008-216, Statement to Respondent, Notice of Defense, Request for Discovery, and  
27 Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record  
28

1 with the Board, which was and is 933 Rosecrans Street, San Diego, CA 92106.

2 A copy of the Accusation is attached as Exhibit A, and is incorporated herein by reference.

3 4. Service of the Accusation was effective as a matter of law under the  
4 provisions of Government Code section 11505, subdivision (c).

5 5. On or about February 3, 2008, the U.S. Postal Service Domestic Return  
6 Receipt bearing the signature "R. Moore" and dated February 11, 2008, was returned to the  
7 Department of Justice. No other packets were returned to the office.

8 6. Government Code section 11506 states, in pertinent part:

9 (c) The respondent shall be entitled to a hearing on the merits if the  
10 respondent files a notice of defense, and the notice shall be deemed a specific  
11 denial of all parts of the accusation not expressly admitted. Failure to file a notice  
of defense shall constitute a waiver of respondent's right to a hearing, but the  
agency in its discretion may nevertheless grant a hearing.

12 7. Respondent failed to file a Notice of Defense within 15 days after service  
13 upon him of the Accusation, and therefore waived his right to a hearing on the merits of  
14 Accusation No. 2008-216.

15 8. California Government Code section 11520 states, in pertinent part:

16 (a) If the respondent either fails to file a notice of defense or to appear at  
17 the hearing, the agency may take action based upon the respondent's express  
18 admissions or upon other evidence and affidavits may be used as evidence without  
any notice to respondent.

19 9. Pursuant to its authority under Government Code section 11520, the Board  
20 finds Respondent is in default. The Board will take action without further hearing and, based on  
21 the evidence on file herein, finds that the allegations in Accusation No. 2008-216 are true.

22 10. The total cost for investigation and enforcement in connection with the  
23 Accusation are \$2,488.50.

24 DETERMINATION OF ISSUES

25 1. Based on the foregoing findings of fact, Respondent Robert L. Moore has  
26 subjected his Registered Nurse License No. 633963 to discipline.

27 2. A copy of the Accusation is attached.

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- 1                   3.     The agency has jurisdiction to adjudicate this case by default.
- 2                   4.     The Board is authorized to revoke Respondent's Registered Nurse based
- 3 upon the following violations alleged in the Accusation:
- 4                   a.     Business & Professions Code sections 2761(a), 2761(f), and 490 -
- 5 conviction of a crime substantially related to the qualifications, functions, or duties of a
- 6 Board licensee;
- 7                   b.     Business & Professions Code sections 2761(a) and 2762(b) -
- 8 unprofessional conduct/dangerous use of alcohol;
- 9                   c.     Business & Professional Code section 2762(c) - unprofessional
- 10 conduct/conviction involving the consumption of alcohol; and
- 11                   d     Business & Professional Code section 2762(d) - unprofessional
- 12 conduct/confinement for intemperate use of alcohol.

13                                   ORDER

14                   IT IS SO ORDERED that Registered Nurse No. 633963, heretofore issued to

15 Respondent Robert L. Moore, is revoked.

16                   Pursuant to Government Code section 11520, subdivision (c), Respondent may

17 serve a written motion requesting that the Decision be vacated and stating the grounds relied on

18 within seven (7) days after service of the Decision on Respondent. The agency in its discretion

19 may vacate the Decision and grant a hearing on a showing of good cause, as defined in the

20 statute.

21                   This Decision shall become effective on September 1, 2008.

22                   It is so ORDERED July 31, 2008

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24                                   *LaTranene W Tate*

25                                   \_\_\_\_\_  
FOR THE BOARD OF REGISTERED NURSING

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Attachment:

Exhibit A: Accusation No.2008-216

Exhibit A  
Accusation No. 2008-216

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of the State of California  
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11 **BOARD OF REGISTERED NURSING**  
12 **DEPARTMENT OF CONSUMER AFFAIRS**  
13 **STATE OF CALIFORNIA**

14 In the Matter of the Accusation Against:

Case No. 2008-214

15 **ROBERT L. MOORE**  
933 Rosecrans Street  
San Diego, CA 92106

**A C C U S A T I O N**

16 Registered Nurse License No. 633963

17 Respondent.  
18  
19

20 Complainant alleges:

21 **PARTIES**

22 1. Ruth Ann Terry, M.P.H., R.N (Complainant) brings this Accusation solely  
23 in her official capacity as the Executive Officer of the Board of Registered Nursing (Board).

24 **Registered Nurse License**

25 2. On or about March 9, 2004, the Board issued Registered Nurse License  
26 Number 633963 to Robert L. Moore (Respondent). The Registered Nurse license was in full  
27 force and effect at all times relevant to the charges brought herein and will expire on April 30,  
28 2008, unless renewed.

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3. This Accusation is brought before the Board under the authority of the

4. Section 2750 of the Business and Professions Code provides, in pertinent

5. Section 2761 of the Code provides, in pertinent part:

"The board may take disciplinary action against a certified or licensed nurse or

"(a) Unprofessional conduct, which includes, but is not limited to, the following:

17 . . .

"(f) Conviction of a felony or of any offense substantially related to the

” . . .

6. Section 2762 of the Code states:

"In addition to other acts constituting unprofessional conduct within the meaning

11

"(b) Use any controlled substance as defined in Division 10 (commencing with

1                   "(c) Be convicted of a criminal offense involving the prescription, consumption,  
2 or self-administration of any of the substances described in subdivisions (a) and (b) of this  
3 section, . . . , in which event the record of the conviction is conclusive evidence thereof.

4                   "(d) Be committed or confined by a court of competent jurisdiction for  
5 intemperate use of or addiction to the use of any of the substances described in subdivisions (a)  
6 and (b) of this section, in which event the court order of commitment or confinement is prima  
7 facie evidence of such commitment or confinement.

8                   ". . .

9                   7.       Section 490 of the Code states:

10                  "A board may suspend or revoke a license on the ground that the licensee has been  
11 convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties  
12 of the business or profession for which the license was issued. A conviction within the meaning  
13 of this section means a plea or verdict of guilty or a conviction following a plea of nolo  
14 contendere. Any action which a board is permitted to take following the establishment of a  
15 conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has  
16 been affirmed on appeal, or when an order granting probation is made suspending the imposition  
17 of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the  
18 Penal Code."

19                  8.       Section 493 of the Code states:

20                  "Notwithstanding any other provision of law, in a proceeding conducted by a board  
21 within the department pursuant to law to deny an application for a license or to suspend or revoke  
22 a license or otherwise take disciplinary action against a person who holds a license, upon the  
23 ground that the applicant or the licensee has been convicted of a crime substantially related to the  
24 qualifications, functions, and duties of the licensee in question, the record of conviction of the  
25 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,  
26 and the board may inquire into the circumstances surrounding the commission of the crime in  
27 order to fix the degree of discipline or to determine if the conviction is substantially related to the  
28 qualifications, functions, and duties of the licensee in question.



1                   9.       California Code of Regulations, title 16, section 1444, states:

2                   “A conviction or act shall be considered to be substantially related to the  
3 qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the  
4 present or potential unfitness of a registered nurse to practice in a manner consistent with the  
5 public health, safety, or welfare. Such convictions or acts shall include but not be limited to the  
6 following:

7                   “(a) Assaultive or abusive conduct including, but not limited to, those violations  
8 listed in subdivision (d) of Penal Code Section 11160.

9                   “(b) Failure to comply with any mandatory reporting requirements.

10                  “(c) Theft, dishonesty, fraud, or deceit.

11                  “(d) Any conviction or act subject to an order of registration pursuant to Section  
12 290 of the Penal Code.”

13                  10.       Section 482 of the Code states:

14                  “Each board under the provisions of this code shall develop criteria to evaluate the  
15 rehabilitation of a person when:

16                  “(a) Considering the denial of a license by the board under Section 480; or

17                  “(b) Considering suspension or revocation of a license under Section 490.

18                  “Each board shall take into account all competent evidence of rehabilitation  
19 furnished by the applicant or licensee.”

20                  11.       California Code of Regulations, title 16, section 1445(b) states:

21                  “When considering the suspension or revocation of a licensee on the grounds that  
22 a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of  
23 such person and her/his eligibility for a license will consider the following criteria:

24                  (1) Nature and severity of the act(s) or offense(s).

25                  (2) Total criminal record.

26                  (3) The time that has elapsed since commission of the act(s) or offense(s).

27                  (4) Whether the licensee has complied with any terms of parole, probation,  
28 restitution, or any other sanctions lawfully imposed against the licensee.

1 (5) If applicable, evidence of expungement proceedings pursuant to Penal Code  
2 section 1203.4.

3 (6) Evidence, if any, of rehabilitation submitted by the licensee.

4 12. Section 492 of the Code states:

5 "Notwithstanding any other provision of law, successful completion of any  
6 diversion program under the Penal Code, or successful completion of an alcohol and drug  
7 problem assessment program under Article 5 (commencing with section 23249.50) of Chapter 12  
8 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2  
9 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in  
10 that division, from taking disciplinary action against a licensee or from denying a license for  
11 professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a  
12 record pertaining to an arrest.

13 "This section shall not be construed to apply to any drug diversion program  
14 operated by any agency established under Division 2 (commencing with Section 500) of this  
15 code, or any initiative act referred to in that division."

16 13. Section 118, subdivision (b), of the Code provides that the suspension,  
17 expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to  
18 proceed with a disciplinary action during the period within which the license may be renewed,  
19 restored, reissued or reinstated.

20 14. Section 2811(b) of the Code provides, in pertinent part, that the Board may  
21 renew an expired license at any time within eight years after the expiration.

22 15. Section 125.3 of the Code provides, in pertinent part, that the Board may  
23 request the administrative law judge to direct a licensee found to have committed a violation or  
24 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation  
25 and enforcement of the case.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(June 9, 2005, Conviction of Substantially Related Crime on January 25, 2005)**

3 16. Respondent is subject to disciplinary action under sections 2761(a),  
4 2761(f), and 490, for conviction on June 9, 2005, of a crime substantially related to the  
5 qualifications, functions, or duties of a Board licensee, as more particularly alleged below:

6 A. On or about June 9, 2005, in San Diego Central Superior Court Case No.  
7 M956538, entitled *People v. Robert L. Moore*, Respondent pled guilty to driving his car while  
8 under the influence of alcohol and with a blood alcohol ratio of 0.08 or more, by weight, in  
9 violation of Vehicle Code section 23152(b) and in aggravation Respondent had a prior  
10 conviction of a violation of Vehicle Code section 23152(b) on August 22, 2003, as described  
11 below.

12 B. Respondent was sentenced to 365 days in the custody of the Sheriff,  
13 suspended, upon numerous terms and conditions including, 5 years summary probation, 96 hours  
14 in the custody of the Sheriff's work and release program, \$1,750.00 fine, 5 days community  
15 service, complete the multiple conviction education program, restricted driver's license for work,  
16 court and education only.

17 C. The facts and circumstances surrounding the conviction are that on January 25,  
18 2005, a police officer noticed Respondent driving at an unsafe speed near an elementary school  
19 soon after the children were dismissed for the day. The officer directed Respondent to the curb.  
20 Respondent admitted to recently drinking three or four beers. There were empty beer cans in  
21 Respondent's passenger seat.

22 **SECOND CAUSE FOR DISCIPLINE**

23 **(Unprofessional Conduct - Dangerous Use of Alcohol)**

24 17. Respondent is subject to disciplinary action under sections 2761(a) and  
25 2762(b), in that he used alcohol to an extent and in a manner that was dangerous to himself and  
26 to the public. The circumstances are as follows:

27 A. On or about December 18, 2006, a San Diego Harbor Police officer  
28 discovered Respondent unconscious with blood on his lips, slumped over in the driver's seat of

1 his car. The keys were in the ignition, the headlights and radio were on, and the hood of the car  
2 was warm to the touch. The officer detected a strong smell of alcohol when he opened the  
3 vehicle door and awoke Respondent with a sternum rub. Respondent was unable to stand  
4 without support such that the officer determined a field sobriety test would be unsafe. The  
5 officer arrested Respondent for driving under the influence of alcohol and transported  
6 Respondent to the county jail.

7 **THIRD CAUSE FOR DISCIPLINE**

8 **(Unprofessional Conduct - Dangerous Use of Alcohol)**

9 18. Respondent is subject to disciplinary action under sections 2761(a) and  
10 2762(b), in that he used alcohol to an extent and in a manner that was dangerous to himself and  
11 to the public, by driving on public streets while under the influence of alcohol and with a blood  
12 alcohol ratio over 0.08%, as described above in paragraph 16, which is incorporated herein.

13 **FOURTH CAUSE FOR DISCIPLINE**

14 **(Unprofessional Conduct -  
15 Conviction Involving the Consumption of Alcohol)**

16 19. Respondent is subject to disciplinary action under section 2762(c), in that  
17 his conviction for violations of Vehicle Code section 23152(b) involve his illegal consumption  
18 of alcohol in combination with driving, as described above in paragraph 16, which is  
19 incorporated herein.

20 **FIFTH CAUSE FOR DISCIPLINE**

21 **(Unprofessional Conduct -  
22 Confinement for Intemperate Use of Alcohol)**

23 20. Respondent is subject to disciplinary action under sections 2762(d), in that  
24 his intemperate use of alcohol in combination with driving, as described above in paragraph 16,  
25 which is incorporated herein, resulted in the Superior Court of California ordering his  
26 commitment to custody of the Sheriff for 96 days, as described above in paragraph 16(B.).

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**Abstract**

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1 Professions Code section 125.3; and

2 3. Taking such other and further action as deemed necessary and proper.

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4 DATED: 1/18/08

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Ruth Ann Terry for  
RUTH ANN TERRY, M.P.H., R.N.  
Executive Officer  
Board of Registered Nursing  
State of California  
Complainant

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